



This document is scheduled to be published in the Federal Register on 08/27/2013 and available online at <http://federalregister.gov/a/2013-20800>, and on FDsys.gov

Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 402

Docket No. FCIC-11-0003

RIN 0563-AC31

Catastrophic Risk Protection Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Catastrophic Risk Protection Endorsement. The intended effect of this action is to clarify existing policy provisions and to incorporate changes that are consistent with those made in the Common Crop Insurance Policy Basic Provisions and to incorporate provisions regarding catastrophic risk protection coverage for area yield plans from the Area Risk Protection Insurance (ARPI) Basic Provisions. The changes will be effective for the 2014 and succeeding crop years for all crops with a contract change date on or after the effective date of this rule, and for the 2015 and succeeding crop years for all crops with a contract change date prior to the effective date of this rule.

DATES: This rule is effective [insert date 30 days after this rule is published in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States

Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205,
Kansas City, MO 64141–6205, telephone (816) 926– 7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has

not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background:

This rule finalizes changes to the Catastrophic Risk Protection Endorsement that were

published by FCIC on August 17, 2011, as a notice of proposed rulemaking in the Federal Register at 76 FR 50929-50931. The public was afforded 60 days to submit written comments after the regulation was published in the Federal Register. Finalization of this rule was deferred to assure it was in conformance to changes that were also being made in proposed and final rule as noted below.

A total of 35 comments were received from five commenters. The commenters were insurance providers, an insurance service organization, a University, and an interested party. The public comments received regarding the proposed rule and FCIC's responses to the comments are as follows:

General

Comment: A commenter stated there should be zero catastrophic risk which is assumed by the American taxpayer. The commenter stated the American taxpayers are already saddled with the bank risks; they do not need to take on any risk for this industry. This industry consistently shifts all its costs onto American taxpayers and it is clear this needs to be stopped. Industry costs should be paid for by those in the industry. The commenter also questioned why the American public is not allowed to comment on these policies which seem to pass the risk on to them.

Response: It is unclear what the commenter is referring to. FCIC assumes that this commenter is referring to the fact that the government subsidizes 100 percent of the premium for catastrophic risk protection policies. FCIC does not have the authority to eliminate premium subsidy for catastrophic risk protection coverage. Such subsidy is mandated by section 508(e) of the Federal Crop Insurance Act and cannot be eliminated without a change in the law. FCIC does not agree the public is not allowed to comment on policies. The

Administrative Procedure Act requires that FCIC publish a notice of proposed rulemaking to give the public notice and an opportunity to comment on the proposed rule during a specified time period before FCIC promulgates new regulations. The public was allowed to comment when the catastrophic risk protection coverage was first proposed in 1995 and public notice and comment procedures have been completed in this rulemaking.

Comment: A commenter stated FCIC has recently published a proposed rule in which Group Risk Protection (GRP), Group Risk Income Protection (GRIP), and Group Risk Income Protection with Harvest Price Option (GRIP-HPO) plans of insurance are proposed to be replaced with new plans called Area Yield Protection (AYP), Area Revenue Protection with the Harvest Price Exclusion (ARP-HPE), and Area Revenue Protection (ARP), respectively. The commenter understands the verbiage “or successor plans of insurance” has been added throughout the proposed rule but if the new area plans are published as a final rule prior to the final rule for the Catastrophic Risk Protection Endorsement, the commenter recommended FCIC change the terminology of all references to “GRP, GRIP, and GRIP-HPO” with “AYP, ARP, and ARP-HPE,” respectively, in any provisions of this Endorsement where these plans of insurance are referenced.

Response: FCIC elected to publish the Catastrophic Risk Protection Endorsement Final Rule after publishing the final rule to combine the GRIP and GRP plans of insurance. Therefore, the provisions have been updated to incorporate provisions regarding catastrophic risk protection coverage for area yield plans from the Area Risk Protection Insurance (ARPI) Basic Provisions.

Order of Priority

Comment: A commenter stated revising the paragraph immediately preceding section 1,

which refers to the order of priority in the event of a conflict, to include the “actuarial documents” and the “Commodity Exchange Price Provisions,” if applicable, and removing “Special Provisions” from the order of priority weakens the policyholder’s position in the event of a dispute. This change could also lessen the policyholder’s chances of recouping losses at a premium rate. The “Special Provisions” priority order is important because it would allow the policyholder the benefit of Specific Provisions provided in the insurance plan for each insured crop that may vary by geographic area which is outlined in the “Special Provisions.” On the other hand “actuarial documents” do not provide the information necessary to determine the premium rate and in some counties there are no actuarial documents available. The policyholder could potentially receive less than the premium price since the price would be determined by FCIC who would use “price election” to determine the loss.

Response: The Special Provisions were not removed from the order of priority. The “actuarial documents” were added to the order of priority following the Special Provisions. The actuarial documents are a part of the policy. FCIC has revised the Agreement to Insure by replacing the phrase “policy provisions” with the word “policy” because the actuarial documents are a part of the policy. The policy priority has been revised to now state “(2) Special Provisions” and “(3) actuarial documents” and is renumbered accordingly.

Comment: A few commenters recommended not capitalizing “Actuarial Documents” in the paragraph immediately preceding section 1 which refers to the order of priority in the event of a conflict since it is not capitalized in other references throughout the Endorsement, such as in sections 6(b) and 6(b)(1).

Response: FCIC agrees “actuarial documents” should not be capitalized and has

modified the phrase accordingly.

Section 1 - Definitions

Comment: A few commenters stated in section 1 most of the current definitions are being deleted because they are either duplicates of the definitions in the Common Crop Insurance Policy Basic Provisions or identified as no longer applicable or needed. The only definitions that remain are “approved insurance provider,” “FCIC,” and “zero acreage report.” Although “FCIC” is not defined in section 1 of the Common Crop Insurance Policy Basic Provisions, it is spelled out in the opening paragraph of the Common Crop Insurance Policy Basic Provisions. The commenters questioned whether a definition is really needed in the Catastrophic Risk Protection Endorsement just to specify that FCIC is “...a wholly owned Government Corporation within USDA.”

Response: FCIC agrees the definition of “FCIC” is not needed as it is spelled out in the opening paragraph of both the Common Crop Insurance Policy Basic Provisions and the Area Risk Protection Insurance Basic Provisions and has deleted the definition accordingly.

Section 3 – Unit Division

Comment: A few commenters suggested splitting section 3(a) into two sentences or into separate subsections and reversing the order so the rest of this section is combined with the “in lieu of” statement (and not needed for the non-Group Risk policies that do not have basic units by share arrangement). The commenters recommended revising the language to read something like:

“(a) This section is not applicable if you are insured under the Group Risk Plan...”

“(b) This section is in lieu of the unit provisions specified in the applicable crop policy.

For catastrophic risk protection coverage, a unit will be...”

Response: FCIC agrees with the commenters and has revised the provisions in section 3 accordingly.

Section 4 - Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: A commenter stated amending section 4(b) by removing the phrase “expected market price” and adding the phrase “price election” creates uniformity since the phrase has already been replaced in the Common Crop Insurance Policy Basic Provisions released April 2010. However, the phrase “expected market price” by definition allows the FCIC the ability to establish or approve the price level of each agricultural commodity for which insurance is offered. The phrase “price election” by definition is the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy. The commenter suggested amending the definition of “price election” to include a subpart of the definition from the “expected market price” allowing FCIC the ability to establish or approve the price level of each agricultural commodity for which insurance is offered.

Response: FCIC agrees to replace the term “expected market price” with “price election.” However, it is not necessary to revise the definition of “price election” to allow FCIC the ability to establish or approve the price level of each agricultural commodity for which insurance is offered because, as specified in the Common Crop Insurance Policy Basic Provisions, price elections are already announced by FCIC for each insured crop or type. The price elections represent 100 percent of the expected market price. Price elections are determined by FCIC based on the best available data to estimate the expected market price and are issued by the contract change date for each insured crop.

Section 5 - Report of Acreage

Comment: A few commenters stated section 5(a) was not proposed to be revised but it might be worth reviewing if this provision needs to be reconsidered. The commenters questioned whether one person can really sign the acreage report for a catastrophic risk protection policy on behalf of everyone else with an insurable interest in the insured crop without their consent (whether by a power of attorney or otherwise), and those others then be bound by the information in that acreage report, unless they specifically object in writing prior to the acreage reporting date and provide their own acreage reports. The commenters also questioned whether this is intended to apply only to cases such as when the insured entity is a partnership, or a tenant insuring the landlord's share on the tenant's policy. Perhaps this is meant to be limited to the situations mentioned in section 5(b): partnership or joint venture; other cases specifically allowed in the Catastrophic Risk Protection Endorsement (but the tenant-landlord scenario is not mentioned in this Endorsement); and acreage/interest reported by a spouse, child or other household member. The commenters did not think it could be meant to apply when other persons with an insurable share in the crop have their own policies for that crop/county, possibly with a different insurance provider, and possibly with an additional coverage level rather than catastrophic risk protection coverage. The commenters also questioned how this fits the other procedures and requirements regarding someone being the "authorized representative" for the insured entity.

Response: Since no changes to these provisions were proposed and the proposed change is substantive in nature but the public was not provided an opportunity to comment, no change can be made as a result of this comment. FCIC will take this comment under advisement in any future rulemakings.

Section 6 - Annual Premium and Administrative Fees

Comment: A few commenters stated section 6(c) was not proposed to be revised, but with the proposed deletion of the “limited resource farmer” definition (since it is covered in the 2011 Common Crop Insurance Policy Basic Provisions), the reference here to that definition needs to be revised from “...(see section 1)...”, perhaps to “...in the Basic Provisions...” The commenters also recommended considering whether the rest of this subsection is needed here since it duplicates the information in section 7(e)(4) of the Basic Provisions, perhaps reference could be made to that provision instead.

Response: FCIC agrees section 6(c) should be revised to remove reference to section 1 and to remove provisions already contained in the applicable crop policy. This will prevent any potential conflicts between the Catastrophic Risk Protection Endorsement and the applicable Basic Provisions. FCIC has revised the provisions accordingly.

Section 7 – Insured Crop

Comment: A few commenters recommended adding a semicolon before “however” and a comma after in section 7(a). The commenters also recommended rearranging the phrase “you may separately insure acreage under catastrophic risk protection coverage that has been designated as ‘high-risk’ land by FCIC, provided” as “you may separately insure acreage designated as ‘high-risk’ land by FCIC under catastrophic risk protection coverage, provided.”

Response: FCIC agrees with the commenters and has revised the provisions accordingly. In addition, FCIC revised section 7 to clarify the provisions are not applicable to those policies insured under the Area Risk Protection Insurance Basic Provisions.

Comment: A few commenters recommended combining sections 7(a) and 7(b) into one

paragraph (as in the current Catastrophic Risk Protection Endorsement).

Response: FCIC agrees with the commenters and has combined the provisions accordingly.

Comment: A few commenters stated FCIC proposed deleting section 7(b) regarding an “undivided interest” policy because this will not be available under the USDA Acreage Crop Reporting Streamlining Initiative (ACRSI). The commenter questioned whether this is definite, and whether ACRSI will be implemented before the Catastrophic Risk Protection Endorsement Final Rule is published.

Response: ACRSI is an ongoing initiative within the USDA and, regardless of when it is fully implemented, FCIC will no longer recognize undivided interest as an insurable type of person. The applicable procedures will be revised to conform to the removal of undivided interest in this rule.

Section 9 - Claim for Indemnity

Comment: A few commenters stated the “Background” of the proposed rule states that “FCIC proposes to revise section 9 to clarify the price references to include projected prices, dollar amounts of insurance, or dollar amounts of protection because the term “price election” is not applicable to all plans of insurance.” However, the proposed Catastrophic Risk Protection Endorsement provisions did not provide the actual proposed language so the commenters stated it is difficult to comment other than to agree that any outdated “price election” terminology should be updated.

Response: The proposed language to revise section 9 to clarify the price references was in the amendatory language of the proposed rule with request for comments. The amendatory language, which preceded the regulatory text in the proposed rule, stated “1.

Amend section 9 by adding the phrase ‘, projected prices, dollar amounts of insurance, or dollar amounts of protection’ after the phrase ‘multiple price elections’ in the two instances that it appears.” FCIC has removed the phrase “dollar amounts of protection” because this phrase was applicable to the GRP and GRIP plans of insurance.

Section 10 - Concealment or Fraud

Comment: A few commenters stated section 10(a) was not proposed to be revised, but recommended the reference to “insurance provider” be revised to “approved insurance provider” to match the term as defined in section 1.

Response: FCIC agrees the provisions should consistently use the term defined in section 1. However, FCIC believes the term “insurance provider” should be used instead of “approved insurance provider” to be consistent with other provisions in the policy. Therefore, FCIC has changed the defined term “approved insurance provider” to “insurance provider” and revised the definition to be consistent with the definition contained in the Area Risk Protection Insurance Final Rule.

Section 11 - Exclusion of Coverage

Comment: A few commenters stated section 11(a) was not proposed to be revised in the Rule, but section 11(a) states “Options or endorsements that extend the coverage available under any crop policy offered by FCIC will not be available under this endorsement...” However, a few exceptions have been made to this statement in the Crop Insurance Handbook (for example, Frost Protection Option, Silage Sorghum Endorsement and Yield Adjustment Election). This would seem to contradict the “order of priority” statement at the beginning of this Endorsement that says the Catastrophic Risk Protection Endorsement takes priority over anything else in the case of a conflict.

Response: FCIC has made exceptions to allow catastrophic coverage on a few endorsements or options. These endorsements or options are not endorsements or options that add coverage to an underlying policy but actually are independent coverage that was derived from the existing underlying policy but for the purposes of administration have been referred to as options or endorsements. For example, under the current grain sorghum insurance program, grain sorghum grown for silage purposes is not eligible for insurance. Therefore, the Silage Sorghum Endorsement was created to provide crop insurance coverage for sorghum silage and FCIC has allowed catastrophic risk protection level of coverage for the silage sorghum. These exceptions do not include any provision that adds coverage to an existing policy for which additional premium would be charged. Such coverage is not provided under the catastrophic risk protection policy. Therefore, there is no real conflict with section 11(a).

List of Subjects in 7 CFR Part 402

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 402 as follows:

PART 402 – CATASTROPHIC RISK PROTECTION ENDORSEMENT

1. The authority citation for 7 CFR part 402 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 402.4 as follows:

a. Revise introductory text preceding section 1;

b. Add the definition in section 1 for “insurance provider” in alphabetical order; remove

the definitions of “approved insurance provider,” “approved yield,” “county,” “expected market price,” “FCIC,” “FSA,” “household,” “limited resource farmer,” “Secretary,” and “USDA”;

- c. Revise section 2(a);
- d. Revise sections 3(a) and (b);
- e. Revise section 4(a);
- f. Amend section 4(b) by removing the phrase “expected market price” and adding the phrase “price election” in its place;
- g. Amend section 4(c) by removing the phrase “Actuarial Table or the”;
- h. Remove section 4(d);
- i. Amend section 6(b) introductory text by removing the phrase “Special Provisions” and adding the phrase “actuarial documents” in its place;
- j. Revise section 6(c);
- k. Revise section 7; and
- l. Amend section 9 by adding the phrase “, projected prices, or amounts of insurance” after the phrase “price elections” in the two instances that it appears.

The revised text reads as follows:

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

* * * * *

If a conflict exists among the policy, the order of priority is: (1) this Endorsement; (2) Special Provisions; (3) actuarial documents; (4) the Commodity Exchange Price Provisions, if applicable; and (5) any of the policies specified in section 2, with (1) controlling (2), etc.

* * * * *

1. Definitions.

* * * * *

Insurance provider. A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Federal Crop Insurance Act.

* * * * *

2. Eligibility, Life of Policy, Cancellation, and Termination.

(a) You must have one of the following policies in force to elect this Endorsement:

(1) The Common Crop Insurance Policy Basic Provisions (7 CFR 457.8) and applicable Crop Provisions (catastrophic risk protection coverage is not available under individual revenue plans of insurance such as Revenue Protection and Revenue Protection with Harvest Price Exclusion);

(2) The Area Risk Protection Insurance Basic Provisions (7 CFR 407.9) and applicable Crop Provisions (catastrophic risk protection coverage is not available under area revenue plans of insurance such as Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion); or

(3) Other crop policies only if catastrophic risk protection coverage is provided in the applicable crop policy.

* * * * *

3. Unit Division.

(a) This section is not applicable if you are insured under the Area Risk Protection Insurance Basic Provisions (7 CFR 407.9) and applicable Crop Provisions.

(b) This section is in lieu of the unit provisions specified in the applicable crop policy.

For catastrophic risk protection coverage, a unit will be all insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

- (1) In which you have one hundred percent (100%) crop share; or
- (2) Which is owned by one person and operated by another person on a share basis.

(Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.)

* * * * *

4. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) Unless otherwise specified in the Special Provisions, catastrophic risk protection coverage will offer protection equal to:

(1) Fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the price election or projected price, as applicable, if you are insured under the Common Crop Insurance Policy Basic Provisions (7 CFR 457.8) and applicable Crop Provisions;

(2) Sixty-five percent (65%) of the expected county yield indemnified at forty-five percent (45%) of the maximum protection per acre if you are insured under the Area Risk Protection Insurance Basic Provisions (7 CFR 407.9) and applicable Crop Provisions; or

(3) A comparable coverage as established by FCIC for other crop policies only if catastrophic risk protection coverage is provided in the applicable crop policy.

* * * * *

6. Annual Premium and Administrative Fees

* * * * *

(c) The administrative fee provisions of paragraph (b) of this section do not apply if you

meet the definition of a limited resource farmer specified in the applicable crop policy. The administrative fee will be waived if you request it and you meet the requirements contained in the annual premium provisions of the applicable crop policy.

* * * * *

7. Insured Crop.

The crop insured is specified in the applicable crop policy; however, for policies other than those insured under the Area Risk Protection Insurance Basic Provisions, notwithstanding any other policy provision requiring the same insurance coverage on all insurable acreage of the crop in the county, if you purchase additional coverage for a crop, you may separately insure acreage designated as “high-risk” land by FCIC under catastrophic risk protection coverage, provided that you execute a High-Risk Land Exclusion Option and obtain a catastrophic risk protection coverage policy with the same insurance provider on or before the applicable sales closing date. You will be required to pay a separate administrative fee for both the additional coverage policy and the catastrophic risk protection coverage policy.

* * * * *

Signed in Washington, D.C., on August 20, 2013._____.

Brandon Willis
Manager
Federal Crop Insurance Corporation

